

**PULLMAN & COMLEY, LLC**  
ATTORNEYS AT LAW

**KURT D. SHEATHELM**  
90 State House Square  
Hartford, CT 06103-3702  
p 860 424 4356  
f 860 424 4370  
ksheathelm@pullcom.com

September 6, 2007

**VIA FEDERAL EXPRESS**

S. Derek Phelps, Executive Director  
Connecticut Siting Council  
10 Franklin Square  
New Britain, CT. 06051

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**CONNECTICUT  
SITING COUNCIL**

**Re: Docket No. 809 - Petition of ExteNet Systems, Inc. for a Declaratory Ruling of No Jurisdiction or in the Alternative that no Certificate of Environmental Compatibility and Public Needs is required at the Proposed Project and will not have a substantial Adverse Environmental Effect**

Dear Mr. Phelps:

Enclosed please find the original and fifteen (15) copies of T-Mobile's Post-Hearing Brief regarding Docket 809. Copies of these documents have been sent to all parties on the service list for this matter. I have enclosed an extra copy to be date-stamped, along with a posted envelope for its return.

Please call me if there are any questions or problems. Thank you.

Sincerely,



Kurt Sheathelm  
Paralegal

Hartford/71051.2/KSHEATHELM/253323v1

**State of Connecticut  
Connecticut Siting Council**

Petition of ExteNet Systems, Inc. for a Declaratory Ruling of No Jurisdiction or in the Alternative that no Certificate of Environmental Compatibility and Public Needs is required at the Proposed Project and will not have a substantial Adverse Environmental Effect

Docket No. 809

September 6, 2007

**Post-Hearing Brief  
by Omnipoint Communications, Inc. ("T-Mobile")**

Omnipoint Communications, Inc., a subsidiary of T-Mobile USA, Inc. ("T-Mobile"), participating in this matter as an intervenor, submits this brief on the issues of ExteNet's Petition regarding jurisdiction and environmental effect for a Distributed Antenna System ("DAS") to be located along the Merritt Parkway in the towns of Westport, Greenwich, New Canaan, Norwalk and Stamford, following a hearing in this matter in Westport on August 8, 2007.

As indicated in previous hearings on the same proposal submitted by the same company, then called "ClearLinx", T-Mobile does not oppose the construction of the system, but wishes to express its opinion concerning the jurisdiction of the Siting Council over the construction of "towers" used in the system and also on the issue of environmental impact. While T-Mobile has no plans to employ ExteNet's currently proposed DAS, it will consider using DAS in the future once T-Mobile has completed a study that determines that DAS is the most appropriate technology for achieving its communication goals.

**A. The Siting Council should have Jurisdiction over New Poles Erected in a DAS Network**

ExteNet's DAS network will require the installation of seven new poles. Though there are apparently no wireless carriers presently contracted to use the system, it is ExteNet's clear intent that the network will be "used in a cellular system," as defined in Conn. Gen. Stat. §16-50i(a)(6), and therefore, is a "facility". The Connecticut Siting Council ("the Council") has exclusive jurisdiction over the siting of telecommunication "towers" and "associated equipment used in a cellular system." Conn. Gen. Stat. §§16-50i(a)(6) and 16-50x. "Tower" is defined in Council regulations as "a structure with a height greater than its diameter and high relative to its surroundings". Reg. CT. State Agencies §16-50j-2a.

ExteNet's "poles" qualify as towers. In an attempt to avoid Council jurisdiction, ExteNet announced in the August 8<sup>th</sup> hearing that it would reduce six of its seven planned towers from 40 to 25 feet in height, but that change should not be determinative. It may be, as suggested by counsel for ExteNet at the hearing, that the statutes and regulations establishing Council jurisdiction are not exactly suited to the issue of DAS, but that is a constant tension when dealing with a rapidly-changing technology such as telecommunications. The fact remains that the installation of telecommunication towers is clearly the exclusive province of the Siting Council and ExteNet's poles, even at a height of 25 feet, fit the definition of towers. To find otherwise would be to undercut the practical effect of the purpose for having a Siting Council.

ExteNet suggests their new poles are not "towers" because they are for the most part no taller than the trees in their vicinity. That argument works against their position because its logical extension is that a 25 foot pole in an open field is a tower subject to Council jurisdiction while a pole of the same height near a stand of 30 foot trees is not. Such a situation would lead to regulatory chaos and cannot be what is intended by the statutes and regulations.

ExteNet's telecommunication poles should be subject to Siting Council jurisdiction to be consistent with the regulation of other similar telecommunication facilities and realize the intent of the Council's purpose.

**B.      The Granting of a CPCN by the DPUC does not Obviate Siting Council Control over Telecommunication's Facilities**

T-Mobile agrees with and adopts the argument on this subject advanced by New Cingular Wireless PCS, LLC ("AT&T") in its Pre-Hearing Brief in this matter, dated July 26, 2007. ExteNet's argument that a Certificate of Public Convenience and Necessity ("CPCN") granted by DPUC to ExteNet substitutes in some fashion for Siting Council regulation is a red herring, not relevant to the issues presented in this petition.

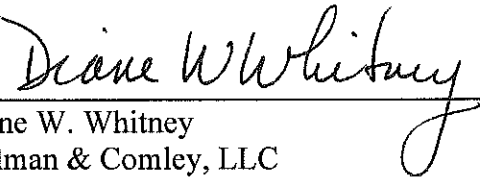
**C.      The Council does not have enough Information to Determine that Installation of the Proposed Network will have no substantial Adverse Environmental Impact**

Simply put, ExteNet asks the Council to take on faith that the proposed DAS network will have no substantial adverse impact. Virtually no information has been presented as to installation details, including the manner that fiber lines will be connected to nodes in the system. As suggested by comments received the day of the hearing from the Department of Transportation, it is likely that the locations of some nodes and poles will have to be changed, further evidence that the impact of the installation cannot be determined at this time with the current level of information.

**CONCLUSION**

T-Mobile submits that ExteNet's DAS network should be subject to Siting Council jurisdiction over its newly installed poles and additional information should be submitted on the effect of the system on the environment.

OMNIPOINT COMMUNICATIONS, INC.  
("T-Mobile")

By:   
Diane W. Whitney  
Pullman & Comley, LLC  
90 State House Square  
Hartford, CT 06103-3702  
(860) 424-4330  
Its Attorney

### **SERVICE**

I hereby certify that on this 6<sup>th</sup> day of September 2007, an original and 15 copies of the foregoing post-hearing brief were served on the Siting Council by Federal Express, and a copy was served on the following parties by first class mail:

ExteNet Systems, Inc.  
c/o Julie D. Kohler, Esq.  
Cohen and Wolf, P.C.  
1115 Broad Street  
P.O. Box 1821  
Bridgeport, CT 06601-4247

Cellco Partnership d/b/a Verizon Wireless  
c/o Kenneth C. Baldwin, Esq.  
Robinson & Cole, LLP  
280 Trumbull Street  
Hartford, CT 06103-3597

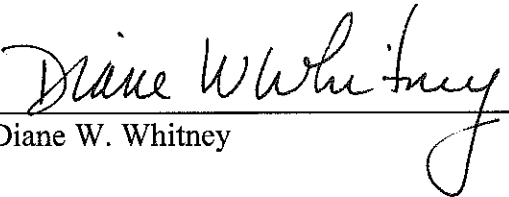
Merritt Parkway Conservancy  
c/o Karen Salerno, Executive Director  
P.O. Box 17072  
Stamford, CT 06907

Elizabeth Galt & Clifford Berger  
c/o Ira W. Bloom, Esq.  
Wake, See, Dimes, Bryniczka, Day & Bloom  
27 Imperial Avenue  
Westport, CT 06880

National Grid Communications, Inc.  
c/o Stephen J. Humes, Esq.  
McCarter & English, LLP  
185 Asylum Street, CityPlace I  
Hartford, CT 06103

Sprint Nextel Corporation  
c/o Thomas J. Regan, Esq.  
Brown Rudnick Berlack Israels, LLP  
185 Asylum Street, CityPlace I  
Hartford, CT 06103-3402

New Cingular Wireless  
c/o Christopher B. Fisher  
Cuddy & Feder LLP  
445 Hamilton Avenue, 14<sup>th</sup> Floor  
White Plains, NY 10601

  
Diane W. Whitney

Hartford/71051.2/DWHITNEY/249407v1